

Editor's note: Appealed -- dismissed after IBLA vacated decision on reconsideration , Civ.No. 85-0071 (D.Wyo. July 10, 1985); See 88 IBLA 13 (July 1, 1985) for IBLA decision vacating this decision.

T.E.T. PARTNERSHIP ET AL.

IBLA 84-228 through
84-238, IBLA 84-609

Decided November 26, 1984

Consolidated appeals from the Wyoming and Montana State Offices, Bureau of Land Management, rejecting appellants' automated simultaneous oil and gas lease applications.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

Under 43 CFR 3112.2-1(b) and 43 CFR 3102.4 (1982), a simultaneous oil and gas lease application must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, where the signatory is an agent or attorney-in-fact for the applicant.

APPEARANCES: Edward B. Poitevent II, Esq., and Cecily S. Henson, Esq., New Orleans, Louisiana, for appellants.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Appellants have appealed several decisions of the Bureau of Land Management (BLM) rejecting their various oil and gas lease applications. ^{1/} All of these decisions involve common issues of fact and law, therefore they are consolidated for purposes of appeal. Each appellant submitted an Automated Simultaneous Oil and Gas Lease Application -- Part B, Form 3112-6a, to BLM for parcels available in BLM's July 1983 simultaneous oil and gas lease drawing.

BLM rejected all of the applications for oil and gas leases for the same reason. In IBLA 84-228 through 84-238, BLM found that "[r]egulation 43 CFR 3112.2-1(b) states, in part: ' . . . Applications signed by anyone other than the applicant shall be rendered in a manner to reveal the name of the applicant, the name of the signatory and their relationship'" BLM went on to state that "[y]our application, copy enclosed, does not show the name of the applicant in the signature box, nor does the application

^{1/} See Appendix.

specify whether John C. Saunders is attorney-in-fact for the applicant or the filing service." The issue in these appeals is whether the applications were rendered in a manner to reveal the name of the applicant, the signatory, and their relationship. In IBLA 84-609, BLM similarly rejected the applications for noncompliance with 43 CFR 3112.2-1 and 43 CFR 3102.4.

The application of each appellant was executed in the following manner: (1) The individual or partnership name and the address and zip code, of each appellant was given in the blank which is entitled "Applicant's Full Name, Address and Zip Code"; (2) "Bell Filing Service, Inc.," and its address and zip code was listed in the blank entitled "Filing Service's Full Name, Address and Zip Code (If Applicable)"; (3) the signature block contained a legible handwritten signature of John C. Saunders, preceded by the typewritten word "By," with the typewritten addition, "Attorney-in-Fact"; and (4) the date of the application was contained in the block adjoining the signature block.

In the several drawings, appellants were selected as the applicants with first priority for parcels for which they had respectively applied (see note 1). Appellants received notice of this priority in decisions dated between November 15 and November 23, 1983, and April 26, 1984, from BLM. These decisions informed appellants that although their applications had been given first priority, they were rejected, citing 43 CFR 3112.2-1(b) (1982). 2/

43 CFR 3112.2-1(b) (1982) provides:

The application shall be holographically (manually) signed in ink by the applicant or holographically (manually) signed in ink by anyone authorized to sign on behalf of the applicant. Applications signed by anyone other than the applicant shall be rendered in a manner to reveal the name of the applicant, the name of the signatory and their relationship. (Example: Smith, agent for Jones; or Jones, principal, by Smith, agent.) Machine or rubber stamped signatures shall not be used. [Emphasis added.]

43 CFR 3102.4 (1982) entitled "Signatures" also applies to applications, although in IBLA 84-228 through IBLA 84-238, BLM did not expressly rely on Subpart 3102.4 as a ground for rejecting appellants' applications. Subpart 3102.4 provides:

All applications, offers and requests for approval of an assignment shall be holographically (manually) signed in ink by the potential lessee or by anyone authorized to sign on behalf of the potential lessee. Documents signed by anyone other than the potential lessee shall be rendered in a manner to reveal the name of the potential lessee, the name of the signatory and their relationship. (Example: John Smith, agent for Mary Jones; or ABC Corporation, agent for Mary Jones by John Smith.) Machine or rubber stamped signatures shall not be used. [Emphasis added.]

2/ BLM was citing 43 CFR 3112.2-1(b) (1982), in effect when these applications were filed. This regulation was revised effective Aug. 22, 1983.

[1] Initially, we note that part of BLM's rationale in rejecting the application was that appellants' applications did not show the name of the applicant in the signature box. BLM's reasoning in that regard is misplaced, as there is no requirement that both the applicant's name and signature be shown in the signature box. Subpart 3112.2-1(b) (1982) only requires an application to be holographically (manually) signed by the applicant or by anyone authorized to sign on the applicant's behalf. The regulations do not require that the signature block on the application form must contain both the applicant's name and signature, therefore BLM erred to the extent it would require both the applicant's name and signature in the signature box.

However, BLM correctly rejected appellants' applications, as the applications did not reveal the relationship between the signatory and the applicant as mandated by 43 CFR 3112.2-1(b) and 3102.4 (1982). Here, the signature box on the application was legibly signed by "John C. Saunders" as "Attorney-in-Fact." Nevertheless, one cannot ascertain whether Saunders is attorney-in-fact for the applicants or for the filing service. The applicant is not excused from rendering the application in a manner that will reveal the name of the signatory and the relationship between the signatory and the applicant merely because the application form does not provide for the signer's title.

In ANR Production Co. v. Watt, Civ. No. C83-375-K (D. Wyo. January 11, 1984), ^{3/} the court held that 43 CFR 3102.4 should not be mechanically applied to require rejection of an application for failure to identify the relationship between the applicant (a corporation) and the signatory (an officer of the corporate applicant). In ANR Production, the court found that where BLM in fact knew the relationship between the applicant and the signatory, strict application of the relationship-disclosure requirement was unreasonable and unnecessary. In ANR Production, BLM had no apparent problem determining the relationship of the signatory to the applicant. Thus, there was no burden on BLM in processing the application.

The instant case is clearly distinguishable from ANR Production. Here, BLM had no way of determining whether the signatory (Saunders) was attorney-in-fact for the applicants or for the filing service.

On October 18, 1984, the Under Secretary issued a memorandum directed to the Director, Office of Hearings and Appeals, entitled "The Matter of Corinth Partnership." ^{4/} The memorandum provides in part:

The regulations involved in the ANR case and the Corinth appeal were intended only to require disclosure of the relationship between principals and agents, not relationships of officers to corporations and partners to partnerships * *

^{3/} The court reversed Liberty Petroleum Corp., 73 IBLA 368 (1983). On remand, this Board reinstated BLM's decision upholding the application as valid. See ANR Production Co., 82 IBLA 228 (1984).

^{4/} On June 26, 1984, the Under Secretary stayed this Board's decision in Corinth Partnership, 80 IBLA 31 (1984).

Therefore, the instant matter and all other pending appeals and decisions on like matters should be reviewed for consistency with ANR and the attached memorandum.

The "attached memorandum" referred to was BLM Instruction Memorandum No. 84-658 dated August 15, 1984, entitled Acceptability of Simultaneous Oil and Gas Applications That are Undated or Fail to Designate Relationship of Signatory to Corporate Applicant. It provides in part:

In light of the ANR Production Company decision all SOG applications filed on behalf of a corporation, association, or partnership that do not designate the relationship of the signatory to the applicant will not be deemed rejectable. This change in policy with regard to the acceptability of such applications, pursuant to 43 CFR 3102.4, applies only to situations in which the signatory is a member of the organization that constitutes the applicant, and not merely an outside party or an agent rendering services to the applicant. For example, a corporate officer of ABC Corporation need not designate his relationship to ABC Corporation when signing ABC's SOG application, nor need a partner or a member of an association, designate his relationship to the partnership or association respectively, when signing a SOG application filed on behalf of that partnership or association.

Any third party that is not a member of the corporation, association, or partnership that is the SOG applicant, is not relieved from the regulatory requirements to disclose agent relationships. As noted in Instruction Memorandum No. 84-269, the Federal Register notice of August 19, 1983, (48 FR 37656) emphasized to the public that the Bureau will strictly enforce 43 CFR 3112.2-3 that requires associations, partnerships, and corporations when submitting SOG applications to reveal the names of all parties in interest, namely any party who is or would be vested with any legal or equitable rights under a lease. Therefore, the signatory, if not shown as a third party, can be expected to appear in the membership list which has been submitted with the SOG application. * * *

See Corinth Partnership (On Remand), 83 IBLA 277 (1984). In the instant case, the signatory was an attorney-in-fact or agent for the applicants. Thus, the regulations requiring disclosure of the signatory to the applicant are applicable.

Appellants contend that their applications, viewed in their entireties, are sufficient to indicate the relationship of the signatory to the applicant, citing Leonard Minerals Co., 74 IBLA 371 (1983), Dry River Properties, 69 IBLA 151 (1982), and Hercules (A Partnership), 67 IBLA 151 (1982), for the proposition that the relationship of the signatory to the applicant may be shown by a reference to the qualifications file already of record with BLM, even though the relationship is not apparent on the face of the application. Appellants are correct in that assertion. However, appellants' applications

made no reference to any relevant qualifications file number, where the opportunity to do so was provided. See United Ventures, 74 IBLA 31, 33 (1983). Without a reference to their qualification files, there is no means of identifying the required relationship between the signatory and the applicant. BLM must be able to identify who signed the application.

This Board in Hercules, supra, held that it is the application -- not the signature -- which must be rendered in a manner to reveal the relationship of the signatory to the applicant. See Martin, Williams & Judson, 74 IBLA 342, 343 (1983); United Ventures, supra (construing 43 CFR 3102.4). Unlike the applications which were the subject of our decision in Hercules, these applications provided no means by which that relationship could be revealed by records in the possession of BLM.

On appeal, appellants have provided exhibits evincing that power-of-attorney was granted to John C. Sanders by the various applicants. However, "[i]t is not sufficient for the applicant to provide the required information on appeal." Martin Williams & Judson, supra at 343. See Jonas P. Beachy, 80 IBLA 209 (1984). Strict compliance with the regulations governing simultaneous oil and gas lease applications is required to protect the rights of second- and third-qualified applicants. E.g., Bonita C. Ferguson, 61 IBLA 178 (1982); Ballard E. Spencer Trust, 18 IBLA 25 (1974), aff'd sub nom. Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). It is simply too late to allow appellants to explain the relationship between the signatory and the applicants.

It is well settled that where there is no designated relationship of the signatory to the applicant, either on the application form or through reference to the applicants' qualification file number, the application must be rejected unless the signatory is a member of the applicant business firm or association. E.g., Jonas P. Beachy, supra at 211; Charles R. Tickel, 73 IBLA 360, 90 I.D. 258 (1983); accord, ANR Production, supra; Anadarko Production Co., 83 IBLA 148 (1984).

In Charles R. Tickel, supra, this Board was presented with strikingly similar circumstances. As noted in the Tickel decision, 73 IBLA at 365:

[T]he instructions on form 3112-6a for completing this box state: "FILING SERVICE -- If a filing service was used by the applicant in the preparation of this application, enter the name and address of that filing service." Thus, when an applicant fills in the filing service information on form 3112-6a it must be presumed that he has used that filing service with respect to this application. Contrary to appellant's argument, however, that information alone does not reveal the exact nature of an applicant's agreement with the filing service or the name of the signatory and the relationship between the signatory and the applicant. It is not necessarily true that if an applicant employs a filing service, an officer of the filing service filled out or signed the application. See, e.g., Bernard S. Storper, 60 IBLA 67 (1981). [Emphasis added.]

This is illustrative of the confusion engendered when the applicant's signatory fails to properly identify his or her relationship to the applicant, as the regulation requires. In both Tickel, and the instant case, the name of the lease filing service utilized by the respective applicants was entered on the application forms properly, but the signatory's relationship was not clearly stated. In Tickel, it was argued that it should be apparent to BLM and this Board that the person signing the application was acting on behalf of the filing service employed by the applicant "because the nature of a filing service's business is well known." 73 IBLA at 362. Yet, in this case, appellant argues that "it is clearly obvious from a cursory review of appellants' applications that John C. Saunders is the attorney in fact for appellants and not for Bell Filing Service, Inc., appellants' filing service" (Appellant's Brief at 3 (emphasis added)). Thus, in two different cases, BLM was expected to draw diametrically opposite conclusions based on the same information. In fact, however, BLM was not warranted in drawing any conclusion in either case because the requisite information was not provided, and the applications were properly rejected. The omission was neither trivial nor non-substantive. Cf. Conway v. Watt, 717 F.2d 512 (10th Cir. 1983).

Appellants argue the BLM has previously accepted applications executed in precisely the same fashion as their applications here. However, as demonstrated above, BLM had no rational basis for drawing the conclusion that the signatory was an agent of the applicant or, alternatively, of the filing service. The fact that BLM made an unwarranted assumption in the applicants' favor in past cases is not continuing justification for BLM to ignore appellants' failure to comply with the requirement of the regulation. "Even if appellant were able to demonstrate that [leases] were wrongly issued in the past, this would not militate in favor of reenacting the wrong in this case." George Brennan, Jr., 1 IBLA 4 (1970).

This Board has previously acknowledged that BLM erred to the extent it would require both the applicants' name and signature in the signature box. However, the requirement that the application reveal the relationship between the signatory (agent) and the applicants (principals) is mandated by the regulations, and the subject applications clearly do not meet that requirement.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office, BLM, rejecting appellants' applications for simultaneous oil and gas leases is affirmed as modified.

Edward W. Stuebing
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

James L. Burski
Administrative Judge

APPENDIX

<u>IBLA No.</u>	<u>Appellant</u>	<u>BLM Serial No.</u>	<u>Date of Parcel No.</u>	<u>Date of BLM Drawing</u>	<u>Decision</u>
84-228	T.E.T. Partnership	W 86582	WY-110	7-83	11-15-83
		W 86636	WY-164	7-83	11-16-83
84-229	The Camp Partners	W 86670	WY-198	7-83	11-16-83
84-230	Chaucer Partnership	W 86674	WY-202	7-83	11-16-83
		W 87040	WY-571	7-83	11-22-83
84-231	Russell A. Nelson	W 86681	WY-209	7-83	11-16-83
84-232	Sherbourne P'ship	W 86685	WY-213	7-83	11-17-83
		W 86724	WY-254	7-83	11-21-83
84-233	Yarmouth P'ship	W 86762	WY-292	7-83	11-17-83
		W 87101	WY-632	7-83	11-23-83
84-234	Rutland P'ship	W 86790	WY-320	7-83	11-17-83
		W 87083	WY-614	7-83	11-23-83
84-235	Devonshire P'ship	W 86820	WY-351	7-83	11-18-83
		W 86998	WY-529	7-83	11-22-83
84-236	Ashton J. Fischer	W 86958	WY-489	7-83	11-18-83
84-237	Diane Temple	W 86964	WY-495	7-83	11-18-83
		W 86995	WY-526	7-83	11-18-83
84-238	Two Rich P'ship	W 86594	WY-122	7-83	11-15-83
		W 86656	WY-184	7-83	11-16-83
		W 86676	WY-204	7-83	11-16-83
84-609	Two Rich P'ship	M 59241	MT-170	7-83	4-26-83
		M 59242	MT-169	7-83	4-26-83
	Sherbourne P'ship	M 59247	MT-175	7-83	4-26-83
	Rutland P'ship	M 59261	MT-189	7-83	4-26-83
	Two Rich P'ship	M 59263	MT-191	7-83	4-26-83
	Diane Temple	M 59275	MT-203	7-83	4-26-83
	Maple Partnership	M 59337	MT-265	7-83	4-26-83
	T.E.T. Partnership	M 59430	MT-358	7-83	4-26-83
	Yarmouth P'ship	M 59523	MT-451	7-83	4-26-83

